

REMARKS/ARGUMENTS

The present application includes pending claims 1-44, all of which have been rejected. In particular, claims 1-3, 9-13, 19-23, 29-33 and 35-40 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. 6,774,926 ("Ellis"). Claims 4, 5, 14, 15, 24 and 25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of U.S. 2002/0056119 ("Moynihan"). Claims 6-8, 16-18, 26-28, 34-36 and 41-44 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of U.S. 2002/0104098 ("Zustak"). Without conceding that Ellis qualifies as prior art under 35 U.S.C. 102(e), the Applicants respectfully traverse these rejections for at least the following reasons:

In order to further prosecution, clarify the claims, and place the application in condition for allowance and for appeal, the Applicant has amended independent claims 1, 11, 21, 32, 37 and 39. The Applicant respectfully submits that the claims define patentable subject matter.

The Applicants first turn to the rejection of claims 1-3, 9-13, 19-23, 29-33 and 35-40 as being anticipated by Ellis. "A claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a **single prior art reference**." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). "The **identical** invention must be shown in as complete detail as is contained in ... the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

With those principles in mind, Ellis discloses the following:

[A] video created by a contributor at user equipment 102 may be **distributed** to viewers at receiving user equipment 104 via communications network 106 and Internet service provider (ISP) 108. Videos may be **distributed** this way **in real time**.

Ellis at column 7, lines 33-37 (emphasis added). This portion of Ellis discloses that the video may be "**distributed**" as it is being created (*i.e.*, in "real time"). In Ellis, however, distribution involves uploading the video to a storage facility. The video is then

transmitted from the storage facility to a **broadcast** center. Then the video may be **broadcast** through a personal (as opposed to private) channel at a scheduled time determined by the video creator and/or the broadcaster, or it may be "pulled" by the viewer on demand. However, Ellis does not describe, teach or suggest that **a contributor associates a desired destination with the video**, or that the videos are being "pushed" **from one user to another**.

Furthermore, Ellis does not describe, teach or suggest that the personal channel is in any way "**private**." Indeed, the fact that it may be broadcast or accessed on demand suggests quite the opposite. In general, Ellis describes a scenario in which video data may be generally "distributed" as it is being created (*i.e.*, sent in "real time"). Additionally, Ellis fails to disclose and/or teach "a private television channel ... wherein only those who are authorized by a creator of media, which is communicated via said established private television channel, are allowed to consume said communicated media," as recited in the Applicant's independent claim 1, 11, 21, 32, 37 and 39. (*emphasis added*).

The Applicants respectfully submit that Ellis does not describe, teach or suggest "establishing a **private** television channel to be showed by a first television at a first home **and** a second television at a second home, wherein only those who are authorized by a creator of media, which is communicated via said established private television channel, are allowed to consume said communicated media" as recited in claims 1 and 11, for example. Instead, Ellis discloses distributing or broadcasting media, or accessing the media on demand. Thus, for at least these reasons, Ellis does not anticipate claims 1-3, 9-13, 19-23 and 29-31.

The Office Action notes, however, the following:

Ellis teaches in Fig. 14 that the Contributor can establish a password for themselves (element 200) and the Contributor can establish a password for the Viewer (element 213) so that the "system may only allow those users who supply this password (e.g., to a program guide) to view the program (as described in **Col. 11 Line 46 – Col. 12 Line 15; with further reference to Col. 15 Lines 23-34**).

See October 24, 2008 Office Action at page 4 (*emphasis added*).

The Applicants note, however, that this viewer password feature is akin to a parental block of undesirable material. Such a password does not, however, make the channel "private." Instead, it merely makes the channel "restricted." For example, adult programming often requires a password or code to view. However, using such a password to restrict access to the adult channel (e.g., the "Playboy Channel") does not make the adult channel a "private channel." Instead, such a channel is a public channel that uses a password to restrict access so that impressionable young viewers are unable to view it.

As noted above, the Office Action relies on Ellis at column 11, line 46 to column 12, line 16 and column 15, lines 23-34 as disclosing a "private channel." Ellis does disclose a password that "may be used to ensure that only the contributor is able to modify the data associated with the contributor's personal television channel." See Ellis at column 11, lines 54-57. A password to modify data associated with a channel does not "privatize" or make the channel a "private" channel. Instead, it merely allows a single contributor, as opposed to the rest of the viewing public, to modify the channel. Indeed, such a password provides further evidence that such a channel is **not** private. That is, the modification password may be used to ensure that only the contributor can modify the channel, as opposed to the legions of unknown other viewers who may be viewing the channel. Furthermore, Ellis does not disclose and/or teach "a private television channel to be showed by a first television at a first home **and** a second television at a second home, wherein only those who are authorized by a creator of media, which is communicated via said established private television channel, are allowed to consume said communicated media."

Ellis also discloses, however, another option that "may be used to establish a **viewer password.**" See *id.* at column 12, line 5. "The system may only allow those viewers who supply this password (e.g., to a program guide) to view the program." See *id.* at column 12, lines 5-7. Again, though, a secret password that allows a viewer to view a particular channel does not make the channel private, any more than pay-per-view or adult programming on a typical cable or satellite provider is private. Instead, such a password is used to provide a "parental block" of channels that may not be suitable for some viewers. See *id.* at column 15, lines 23-34 ("Step 248 may involved

applying **parental controls** or other user viewing restrictions to the personal television channel content. For example, a program guide or other application may be used to block access to personal television channel programming based on rating, the identity of the contributor of the personal television channel programming, the subject matter of the personal television programming, or any other suitable **parental control settings**). If desired, contributors may establish passwords to **restrict access** to a personal television channel. Only those users who provide the password at step 248 may view the desired personal television channel programming”).

As explained above, using a password to restrict access to certain suitable viewers does not make a channel “private.” Indeed, many public adult channels and pay-per-view programming operate in such a fashion. However, restricting access in such a fashion does not make these channels “private.” Again, one would not consider the “Playboy channel” private. Instead, it is a public pay channel that may use passwords to prevent young children from viewing the programs on that channel. Furthermore, Ellis fails to disclosure and/or teach “establishing a private television channel to be showed by a first television at a first home **and** a second television at a second home, wherein only those who are authorized by a creator of media, which is communicated via said established private television channel, are allowed to consume said communicated media.” (emphasis)

For at least these reasons, the Applicants respectfully maintain that Ellis does not describe, teach or suggest “establishing a private television channel to be showed by a first television at a first home **and** a second television at a second home,” as recited in claims 1 and 11, for example. Accordingly, the Applicants respectfully request reconsideration of the claim rejections.

Additionally, Ellis does not describe, teach or suggest “associating personal media with said private television channel, wherein said personal media is pushed from said first home to said second home,” as recited in claims 1 and 11, for example. For at least these reasons, Ellis does not anticipate claims 1-3, 9-13, 19-23 and 29-31.

The Office Action states, however, that “Ellis also teaches the distribution of media by playing back a recorded view (Col. 7 Lines 12-17) according to a schedule or on-demand (as described in Col. 7 Lines 27-47; with further reference to Figs. 9, 10,

and 14).” See October 24, 2008 Office Action at pages 4-5. Ellis discloses, however, the following:

Video camera 98 may be used to capture video programming for a personal television channel. Video camera 98 may be separate from cellular telephone 42 or may be constructed as part of cellular telephone 42.... If connected externally, video camera 98 may be a standard video camera that records onto a videocassette tape or other suitable storage medium for subsequent playback. Video may be provided to cellular telephone 42 by video camera in real time as a live video is being created or may be provided by playing back a recorded video. **Cellular telephone 42 may distribute the video to viewers in real time via connection 96.**

See Ellis at column 7, lines 4-17 (emphasis added). Thus, Ellis discloses that a video may be sent to a cellular phone. However, Ellis is clear that the cellular phone, but not the camera, is the vehicle for distribution. As shown above, the cellular phone may distribute the video in **real time**, as previously described.

As noted above, Ellis discloses that the video may be “**distributed**” as it is being created (*i.e.*, in “real time”). See Ellis at column 7, lines 33-38 (“Videos may be distributed in this way in real time”). However, Ellis does not describe, teach or suggest that a contributor associates a desired destination with the video, or that the videos are being “pushed” from one user to another. The Office Action does not provide any citation from Ellis that describes, teaches or suggests a contributor associating a desired destination with a video, or pushing the video from one user to another user. Instead, the Office Action cites Ellis at column 11, lines 65 to column 12, line 3, which states the following:

Option 204 of screen 196 may be used by the contributor to establish the scheduled date on which the program is to be shown or to indicate that the program is available on demand. Options 206 and 208 may be used to establish the starting and ending times for a scheduled program. The title of the program may be entered using option 210.

While this portion of Ellis indicates that a contributor may schedule a date and time for a program and establish a title, it is silent with respect to (1) a contributor associating a

desired destination with a video and (2) a first user pushing video directly to a second user.

The Office Action also cites Ellis at column 9, line 1 to column 10, line 8. This portion of Ellis merely discloses how a user interacts with a program guide. Again, however, there is nothing in this cited portion that describes, teaches or suggests (1) a contributor associating a desired destination with a video and (2) a first user pushing video directly to a second user.

The Office Action also cites Ellis at column 13, line 29 to column 14, line 32. This portion of Ellis discloses that a viewer may select certain programs or channels as "favorites" and "user profiles." See *id.* at column 13, lines 29-52. It also notes that "contributors with personal television channel programs to contribute may upload programs from multiple user equipment locations." See *id.* at column 13, lines 63-65. Further, this portion of Ellis discloses "making personal television channel programming from the contributor available to viewers **in other cable systems or to other viewers in the same cable system**" or "making programming available over the Internet." See *id.* at column 14, lines 24-33 (emphasis added). There is nothing in this cited portion that describes, teaches or suggests, however, (1) a contributor associating a desired destination with a video and (2) a first user pushing video directly to a second user.

If this rejection is maintained, the Applicants respectfully request specific, pin-point citations from Ellis for (1) a contributor associating a desired destination with a video and (2) a first user pushing video directly to a second user. However, for at least the reasons discussed above, the Applicants respectfully request reconsideration of the claim rejections.

Additionally, Ellis does not describe, teach or suggest **"associating destination information regarding one or both of said first and/or second homes** with said private television channel and/or said personal media," as recited in claims 1 and 11, for example. The other independent claims recite similar limitations.

The Office Action cites "channel maps" and Ellis at column 13, line 66 to column 14, line 23 as disclosing this limitation. However, Ellis discloses that "personal television channel program schedule information may be collected from the contributors." See Ellis at column 13, lines 66-67. Such schedule information may be

"supplemented at data storage facility 52...." See *id.* at column 13, line 67 to column 14, line 2. The "schedule information" may be supplemented "with information for channel maps that link certain personal television channels with digital or analog television channels on a viewer's set top box or that link certain personal television channels with Internet address information that may be used to locate the channels when a viewer desires to view certain personal television programming." See *id.* at column 14, lines 4-12. However, this cited portion of Ellis merely discloses an efficient method of using a program guide, in that it allows a user to locate a channel and select programming accordingly. There is nothing in this cited portion of Ellis that describes, teaches or suggests, however, associating destination information **regarding one or both of first and/or second homes** with a private television channel and/or personal media. The "channel maps" do not associate a home with a channel or media. Instead, they simply "link certain personal television channels **with digital or analog television channels** on a viewer's set top box or that link certain personal television channels **with Internet address information that may be used to locate the channels** when a viewer desires to view certain personal television programming." See *id.* at column 14, lines 4-12. For at least these reasons, Ellis does not anticipate any of the pending claims.

Claim 32 recites, in part, "establishing a private television channel; associating personal media with said private television channel; associating destination information regarding one or both of first and/or second locations, respectively, with said private television channel and/or said personal media." For at least the reasons discussed above, the Applicants respectfully submit that Ellis does not anticipate claims 32-33 and 35-36.

Claim 37 recites, in part, "said user interface facilitating creation of a personal television channel; said processor participates to establish the personal television channel on the television display; said processor associates destination information regarding one or both of first and/or second locations with the private television channel and/or the personal media associated with the personal television channel." For at least the reasons discussed above, the Applicants respectfully submit that Ellis does not anticipate claims 37-38.

Claim 39 recites, in part, "a personal television channel viewable on the television display established through participation by said processor, wherein personal media is associated with said personal television channel, wherein destination information regarding the television display is associated with said personal television channel, and wherein said personal television channel is pushed to the television display from a remote location." For at least the reasons discussed above, the Applicants respectfully submit that Ellis does not anticipate claims 39-40.

The Applicants next turn to the rejection of claims 4, 5, 14, 15, 24 and 25 as being unpatentable over Ellis in view of Moynihan. The Applicants respectfully submit that the proposed combination of references does not render these claims unpatentable for at least the reasons discussed above.

The Applicants next turn to the rejection of claims 6-8, 16-18, 26-28 and 34 as being unpatentable over Ellis in view of Zustak. The Applicants respectfully submit that the proposed combination of references does not render these claims unpatentable for at least the reasons discussed above.

Claims 41-44 depend from claims 1, 11, 21 and 27, respectively. The Applicants respectfully submit that these claims are allowable for at least the reasons discussed above with respect to the independent claim from which they depend.

The Applicant also reserves the right to argue additional reasons beyond those set forth herein to support the allowability of claims 1-44, should such a need arise in the future.

CONCLUSION

In general, the Office Action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

The Applicants respectfully request reconsideration of the claim rejections for at least the reasons discussed above. If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned attorney.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 13-0017 in the name of McAndrews, Held & Malloy, Ltd.

Respectfully submitted,

Date: January 27, 2010

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